IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 251 of 1997

in

SPECIAL CIVIL APPLICATION No 4549 of 1983

with

CIVIL APPLICATION No 3209 of 1997

Date of Decision: 18-3-2004

STATE OF GUJARAT

Versus

CHANDRASHEKHAR FULCHANKAR DIXIT

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellants Mr.R.C.Kodekar, AGP

For the Respondent Mr.B.P.Munshi, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Through this Appeal, the judgment of the Single Judge dated 21.8.1996 passed in Special Civil Application No.4549 of 1983 has been challenged.

Whether reporters of Local Papers may be allowed to see the Judgment?

#. Chandrashekhar Fulshanker Dixit (respondent) was appointed - Assistant Sanchalak on 5.8.1961 in the Social Welfare Department, Government of Gujarat. He was absorbed as Junior Clerk in the same Department in 1975 vide order dated 17.1.1975. He passed departmental examination, therefore, promoted to the post of Senior Clerk. On 1.6.1982, he was promoted as Head Clerk. In 1983, he also passed higher standard departmental examination.

#. The sole question for consideration is the claim of respondent for counting seniority from 5.8.1961 when he was appointed as Assistant Sanchalak by the Government of Gujarat in Social Welfare Department. The respondent filed representation seeking seniority from 1961, but his claim has been rejected on 21.3.1983. The respondent refers to appointments of Assistant Sanchalaks in the erstwhile States of Saurashtra and Maharashtra and submits that these Assistant Sanchalaks were also absorbed Junior Clerks by the erstwhile State of Saurashtra and Maharashtra, therefore, the respondent holding similar post of Assistant Sanchalak should also be absorbed accordingly and seniority counted form the date he was initially appointed as Assistant Sanchalak.

#. The appellants submits that the respondent cannot seek help from absorption of Assistant Sanchalaks of erstwhile State of Saurashtra since this post existed in different state. The appellants did not file reply to the petition. Therefore, the averments of respondent (original petitioner) in the petition are deemed to be admitted, therefore, judgment could be passed on that basis alone. However, Single Judge heard the appellants and considered the submissions in the impugned judgment. Finding no substance in the submissions of the appellants, claim of the respondent has been allowed.

#. Our attention has been drawn to order of absorption dated 17.1.1975 absorbing the respondent in the Department with two conditions, namely, his seniority would be reckoned from the date of joining and he will have to pass departmental examination. The respondent

(original petitioner) challenges this order through the writ petition and submits that he cannot be deprived of seniority from 1961 since he was appointed Assistant Sanchalak on 5.8.1961 in the Social Welfare Department of the Government. Simply because he was deployed in units carried out by the Department, he cannot be taken to be employed by any N.G.O. or any other establishment, therefore, he cannot be deprived of the seniority from 1961.

#. We find that the respondent has rightly claimed for seniority from 5.8.1961 when he was appointed Assistant Sanchalak in the Social Welfare Department of the Government. Similar benefit has been given to Assistant Sanchalaks of erstwhile States of Saurashtra and Maharashtra, absorbed as Junior Clerks, being an equivalent post in the same time scale of pay. The case of the respondent is similar, therefore, he cannot be deprived of the seniority claimed by him.

#. The net result of the aforesaid discussion is that there is no merit in this Appeal and the same is dismissed. Interim relief granted earlier is vacated.

#. The respondent be extended the benefit flowing out of this judgment and accordingly, service benefits of the respondent be calculated and paid within three months, since he is stated to have retired from service on May 31, 2000.

#. The Civil Application also stands rejected accordingly.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)